

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed August 28, 2009. Claims 1, 2, 5-14, 16-20, 23, and 24 were pending and rejected in view of cited art.¹ Claims 1, 8, 16, and 24 are amended. Claims 1, 2, 5-14, 16-20, 23, and 24 are now pending in view of the above amendments, of which claims 1, 8, 16, and 24 are the independent claims.

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, are consistent with the Examiner's understanding

B. PRIOR ART REJECTIONS

I. REJECTION UNDER 35 U.S.C. §102(E)

The Office Action rejected claims 1, 2, 5-14, 16-20, 23, and 24 under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 5,368,601 (*Sauer*). Because *Sauer* does not teach or suggest each and every element of the rejected claims, Applicant respectfully traverses this rejection in view of the following remarks.

Sauer was cited as disclosing "a method for suturing tissue in the proximity of an aperture in a tissue wall" (Office Action, page 2). *Sauer* generally relates to "devices for facilitating the suturing of trocar puncture wounds, and more particularly to a device that is insertable through a cannula for presenting a pair of needles loaded onto the ends of a suture, in position to close the trocar wound" (Col. 1, ll. 4-9). *Sauer* makes no mention of using the "trocar wound closure device" being used with a guide wire.

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

In contrast, independent claim 24 recites, in part, that "with a guidewire extending through an aperture in a tissue wall, advancing a suturing device having a distal end and a flexible sheath extending therefrom through the aperture in the tissue wall." As such, Applicant respectfully submits that *Sauer* neither teaches nor suggests the invention claimed in independent claim 24 and Applicant respectfully requests that the rejection under Section 102 be withdrawn with respect to independent claim 24.

Turning to independent claims 1, 8, and 16, in use, the device of *Sauer*, "with the needle carriers retracted, is inserted through the cannula . . . , with the plunger 22 retracted as shown in FIG. 11. The plunger 22 is depressed to extend the needle carriers 70, 72 and position the needles 56 and 58 adjacent to but outside the edges of the puncture wound" (Col. 5, ll. 23-29). Once the needles are in place, "[t]he trocar wound closure device 10 and the cannula 120 are simultaneously pulled outwardly with respect to the cavity 130, and the needles pass through the fascia 128 as shown in FIG. 13. . . . The needles 56, 58 are located and pulled only through the fascia and muscle layers, with conventional needle drivers or the like as shown in FIG. 14." (Col. 5, ll. 30-34 and 36-38)(emphasis added). The Office Action has not cited, nor has Applicant found, any portion of *Sauer* that discloses, teaches, or fairly suggests needles being advanced "into a body guide of a suturing applying device," as recited in independent claims 1, 8, and 16. Rather, the needles are pulled through the fascia and muscle layers as "[t]he trocar wound closure device 10 and the cannula 120 are simultaneously pulled outwardly with respect to the cavity 130" (*Id.* at 30-34).

In view of the above, and since *Sauer* does not teach the inventions being claimed in independent claims 1, 8, 16, and 24, Applicant respectfully requests that the rejections under Section 102 be withdrawn. Since dependent claims 2, 5-7, 9-14, 17-20 and 23 depend from independent claims 1, 8, and 16, Applicant respectfully request that for at least the same reasons the rejection under Section 102 be withdrawn for claims 2, 5-7, 9-14, 17-20 and 23.

C. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any

of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 28th day of January, 2009.

Respectfully submitted,

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